

# The Fair Hearing Process for Consumers Age 3 Years and Older



## DDS

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## **What is the Fair Hearing Process?**

The fair hearing process described in this pamphlet is a process for resolving disagreements between the regional center or state developmental center and consumers or applicants who are **age three or older**. For disagreements involving consumers or applicants who are **under three years of age**, refer to **Parents' Rights in Early Start**, which is available from the regional center or state developmental center.

Under the fair hearing process, disagreements may be about services, eligibility or any decision or action of the regional center or state developmental center with which you disagree. The fair hearing process includes a voluntary informal meeting, mediation, and a fair hearing.

The voluntary informal meeting is a meeting held by the regional center or state developmental center director or his/her designee with you and your authorized representative, if you have one. The purpose of the voluntary informal meeting is to attempt to resolve the issues of the appeal. You, or your authorized representative, may decline the informal meeting.

If you or your authorized representative decline a voluntary informal meeting or are dissatisfied with the decision of the regional center or state developmental center following an informal meeting, and you have not already requested mediation, you may request mediation or proceed directly to a fair hearing.

If mediation is requested, the regional center or state developmental center may accept or decline the request. If accepted, the mediation is conducted in an informal manner by a mediator provided by the Institute for Administrative Justice. Either you, your authorized representative, or the regional center or state developmental center may withdraw at any time from the mediation and proceed to a fair hearing.

If you, your authorized representative, or the regional center or state developmental center decline mediation, or if mediation fails to resolve the issue or issues to the satisfaction of you or your authorized representative, the matter shall proceed to fair hearing.

The fair hearing is more formal and is conducted by an Administrative Law Judge employed by the Office of Administrative Hearings.

If you are **not** a participant in the Medicaid Home and Community-Based Services Waiver (Waiver) program, a final decision must be rendered **within 80 days** of the postmark or receipt of the Fair Hearing Request by the regional center or state developmental center, whichever is earlier. If you are a participant in the Waiver program, a final decision must be rendered **within 90 days** of the postmark or receipt of the Fair Hearing Request form by the regional center or state developmental center, whichever is earlier. This 90-day time limit may be extended if you request mediation or if you request a continuance or postponement of your hearing.

The Notice of Proposed Action received from the regional center or state developmental center, if applicable, indicates whether or not you are a participant in the Waiver program. If you have not received a Notice of Proposed Action, you may contact the regional center or state developmental center to determine if you are, or are not, a participant in the Waiver program. **Services are not affected by your participation, or non-participation, in the Waiver program. If you are a Waiver participant and are notified by the regional center or state developmental center that you are no longer eligible for waiver participation, your existing services will not be impacted by this change.**

### ***Is There a Way to Settle Without a Fair Hearing?***

Disagreements often can be settled without a fair hearing. Contact a regional center or state developmental center representative, a clients' rights advocate, the area board or other advocacy organization for additional information and assistance.

### ***What are the Time Lines for Starting the Fair Hearing Process?***

Any applicant, recipient of services, or authorized representative may file a request for a fair hearing. The request must be **in writing** and filed with the regional center or state developmental center **within 30 days** after notification of a decision or action with which you or your authorized representative disagree. The request must be on a Fair Hearing Request form provided by the regional center or state developmental center.

**You may verbally ask a regional center or state developmental center employee for a fair hearing. The employee will give you a Fair Hearing Request form and help you fill out the form, if needed.** Current services will be continued during the appeal process if your request for a fair hearing is postmarked or received by the regional center or state developmental center **within 10 days** after you receive written notice of a decision or action with which you disagree. The continuation of services during the fair hearing process is also known as "aid paid pending."

### ***What Happens When I File My Request for Fair Hearing?***

When the regional center or state developmental center receives your request for a fair hearing, they will send you and your authorized representative a copy of this brochure advising you of your fair hearing, mediation, and informal meeting rights. You will also be advised of the proposed date, time and place for the voluntary informal meeting, if requested by you or your authorized representative.

If mediation is requested, the regional center or state developmental center has **five days** from the date of receipt of the written request for mediation to decide to accept or decline mediation. You will receive written notification of the regional center's or state developmental center's decision to accept or decline mediation **within five days** of their decision.

Also **within five days** of receipt of your request for a fair hearing, the regional center or state developmental center will send a copy of your request to the Office of Administrative Hearings and, if mediation is requested, to the Institute for Administrative Justice. Upon receipt of your request for a fair hearing, the Office of Administrative Hearings will also send you information regarding your fair hearing rights. You will also receive notice of the time, place, and date of the fair hearing, the availability of advocacy assistance, and the rights and responsibilities of the parties involved in the fair hearing.

If mediation is accepted, the Institute for Administrative Justice will send you information regarding mediation rights. You will also receive notice of the time, place, and date of the mediation, the availability of advocacy assistance, and the rights and responsibilities of the parties involved in the mediation.

### ***What are My Rights at Each Phase of the Fair Hearing Process?***

Every applicant, recipient of services, or authorized representative has the following rights at each phase of the fair hearing process (informal meeting, mediation, fair hearing) :

- You may have a person or agency appointed by the local area board as your representative to assist you in the fair hearing process;
- You may be present at the informal meeting, mediation, and at the fair hearing with the representative of your choice;
- You may give written and oral evidence;
- You may confront and cross-examine witnesses;
- You may appear with an attorney or any other representatives you choose;
- You may review records the regional center or state developmental center obtained while providing services; and
- You may request that an interpreter be provided, if necessary, at no cost to you.

### ***How Can I Get Help With This Process?***

You can get help from a friend, family member, advocate, attorney or anyone else you choose. The regional center or state developmental center is not responsible for the costs if you hire an attorney or someone else to assist you. When your fair hearing request is received, the regional center or state developmental center must also provide you information on available advocacy assistance, including referral to the clients' rights advocate, the area board and other advocacy organizations.

### ***How is the Voluntary Informal Meeting Scheduled?***

When the regional center or state developmental center receives your Fair Hearing Request form, the regional center or state developmental center will immediately notify you and your authorized representative, in writing, of your fair hearing rights. With the notification of rights, you

will be advised of a proposed date, time, and place for a voluntary informal meeting, if requested by you or your authorized representative. You or your authorized representative may review records prior to an informal meeting. The voluntary informal meeting will be held **within 10 days** of the date the Fair Hearing Request form is postmarked or received by the regional center or state developmental center, whichever is earlier. **Either you or your authorized representative may decline an informal meeting with the regional center or state developmental center and proceed to mediation or a fair hearing.**

### ***What Happens in a Voluntary Informal Meeting?***

The regional center or state developmental center director or his/her designee will conduct the informal meeting. The informal meeting will be held at a time and place reasonably convenient to you and your authorized representative. It will be in English, but the regional center or state developmental center will provide an interpreter if needed and if requested in advance. You or your representative may present the issues, facts and reasons for your appeal. You may confront and cross-examine any witnesses.

### ***How and When Will I be Notified of the Regional Center's or State Developmental Center's Informal Meeting Decision?***

**Within five days** of the informal meeting, the regional center or state developmental center will provide a written decision to you and your authorized representative. The decision will:

- Identify the issues presented;
- Rule on each issue identified;
- State the facts supporting each ruling;
- Identify the laws, regulations, and policies upon which each ruling is based; and
- Explain the procedure for appealing the regional center or state developmental center decision.

If you or your authorized representative are satisfied with the regional center's or state developmental center's decision following an informal meeting and you want to withdraw your request for hearing, complete a Fair Hearing Request Withdrawal form provided by the regional center or state developmental center. The completed withdrawal form must be submitted to the regional center or state developmental center director. The decision of the regional center or state developmental center will go into effect **10 days after the receipt by the regional center or state developmental center of the withdrawal of the request for a fair hearing.**

## **What If I Do Not Agree with the Regional Center's or State Developmental Center's Informal Meeting Decision?**

If you or your authorized representative are dissatisfied with the decision of the regional center or state developmental center following the voluntary informal meeting, the matter will proceed to mediation, if mediation has been requested and accepted and the fair hearing request has not been withdrawn. If mediation has not been requested or accepted and the fair hearing request has not been withdrawn, the matter will proceed to fair hearing.

## **How is Mediation Scheduled?**

Upon receipt of a written request for mediation, the regional center or state developmental center shall be given **five days** to accept or decline mediation. You, your authorized representative, and the Institute for Administrative Justice shall be notified immediately of the regional center's or state developmental center's decision.

**Within five days** after receipt of the notice of the regional center's or state developmental center's decision to accept mediation, the Institute for Administrative Justice will notify you, your authorized representative, and the regional center or state developmental center of the following:

- The time, place, and date of the mediation;
- Your rights and the regional center's or state developmental center's rights;
- Availability of advocacy assistance;
- The name, address, and telephone number of the person or office to mediate the dispute.

The mediation shall be held **within 20 days** of the date the Fair Hearing Request form is postmarked or received by the regional center or state developmental center, whichever is earlier.

## **What If I Need to Have the Mediation Rescheduled?**

You may request that the mediation be postponed. Your request may be granted at the mediator's discretion. If your request to postpone the mediation is granted, the mediation conference will be rescheduled and the time for issuing a fair hearing decision may be extended.

## **What is Mediation Like?**

Mediation is a voluntary meeting of the parties to a dispute with a neutral person (the mediator) who has training and experience helping people settle conflicts. It is a common method for resolving disputes amicably and is used frequently in a number of fields. The mediator facilitates an informal, non-adversarial meeting where the parties have the opportunity and authority to agree on a resolution. The mediator helps the parties consider the facts, issues and reasons for the appeal and for the regional center's or state developmental center's decision, and assists the parties with the goal of reaching a solution agreeable to both parties.

During the mediation, the mediator may meet separately, and confidentially, with any person or group of persons involved in the mediation. This is sometimes called “meeting in caucus.” Because the mediator does not act as a judge, disputed issues are resolved through mediation only when the parties reach an agreement that is acceptable to both sides. Since mediation is voluntary, you, your authorized representative, or the regional center or state developmental center may decide at any time to proceed to hearing without mediation. The mediator will be provided by the Institute for Administrative Justice (a program of McGeorge School of Law). It will be in English, but the Institute for Administrative Justice will provide an interpreter, if necessary, and if requested in advance of the mediation.

If an agreement is reached through mediation and you want to withdraw your request for hearing, you must complete a Fair Hearing Request Withdrawal form provided by the regional center, the mediator, or state developmental center. The completed withdrawal form must be submitted to the regional center or state developmental center director. The final resolution agreed to during mediation will go into effect **10 days after receipt by the regional center or state developmental center of the withdrawal of the request for a fair hearing.**

### ***What Happens if the Mediation Fails to Resolve the Issue(s)?***

If the mediation fails to resolve an issue or issues to your satisfaction, or to the satisfaction of your authorized representative, the unresolved issue or issues will proceed to fair hearing. The mediator will immediately notify the Office of Administrative Hearings of the outcome of the mediation.

### ***How is the Fair Hearing Scheduled?***

When your request for fair hearing is received, the Office of Administrative Hearings will immediately notify you, your authorized representative and the regional center or state developmental center director in writing, of the following:

- The time, place and date of the fair hearing;
- Your rights, including those identified on page 3 of this pamphlet, and the rights of the regional center or state developmental center;
- Availability of advocacy assistance; and
- The name, address and telephone number of the person or office to conduct the fair hearing.

The fair hearing will be held **within 50 days** after the date the Fair Hearing Request form is postmarked or received by the regional center or state developmental center, whichever is earlier. You, your authorized representative, or the regional center or state developmental center may request more time. A final administrative decision must be issued **within 90 days** of the postmark or delivery of the request for fair hearing by the regional center or state developmental center.



## **What If I Need to Have the Fair Hearing Rescheduled?**

You may request that the hearing be postponed for good cause. The Administrative Law Judge will decide whether your request should be granted. If your request to postpone the fair hearing is granted, the hearing will be rescheduled and the time allowed for issuing a decision may be extended. The regional center or state developmental center may also request that the fair hearing be postponed. A postponement granted at the regional center's or state developmental center's request may not extend the time for the Administrative Law Judge to issue a decision.

The fair hearing will be held at a time and place reasonably convenient to you and your authorized representative. You, or your authorized representative, and the regional center or state developmental center must agree on the location of the fair hearing. The fair hearing will be in English. An interpreter will be provided by the Office of Administrative Hearings, if necessary, and if requested in advance.

## **What is a Fair Hearing Like?**

The fair hearing may be similar to a court hearing, with witnesses, exhibits and rules of evidence. A fair hearing does not need to be conducted according to the technical rules of evidence and those related to witnesses. An Administrative Law Judge will preside. The judge is not employed by the regional center or state developmental center, but by the Office of Administrative Hearings.

At the fair hearing, you may represent yourself. You may also be represented by an attorney, advocate, family member, friend or anyone else you choose. If you hire an attorney or someone else, you will be responsible for those costs. Management staff or a designee normally represents the regional center or state developmental center.

**At least five days prior to the fair hearing, you and the regional center or state developmental center must exchange a list of witnesses, the subject of the testimony of each witness, and copies of all documentary evidence which may be presented. If the information is not provided in advance, the Administrative Law Judge may not allow it to be used at the hearing.** If you do not understand information you receive, you may request assistance from any advocate.

Each side can offer relevant evidence to prove its case. Both sides can bring witnesses who know about the issues involved and documents such as service records or medical reports. You should try to have witnesses come voluntarily, but you have the right to subpoena relevant records or people for the fair hearing. If you subpoena a witness, there may be certain costs and/or fees that will be your responsibility. **Contact the Office of Administrative Hearings well before the fair hearing to get subpoenas.** All testimony will be under oath or affirmation. **Before the fair hearing closes, your side must submit all the evidence you want the Administrative Law Judge to consider.** After all testimony has been heard, each side may make a closing argument that addresses the facts brought out by evidence.

## ***How and When Will I be Notified of the Fair Hearing Decision?***

The decision of the Administrative Law Judge will include:

- A summary of the facts;
- A statement of the evidence that was relied upon;
- A decision on each issue;
- Identification of the laws, regulations and policies supporting the decision;
- Notification that this is the final administrative hearing decision; and
- Notification that either you or the regional center or state developmental center may appeal to a court of competent jurisdiction **within 90 days**.

If the issues raised at the hearing **do not** relate to the Waiver program, the Administrative Law Judge will send the written decision to you, your authorized representative, and the regional center or state developmental center **within ten days** after the last day of the fair hearing, but not later than **80 days** following the date the Fair Hearing Request form was postmarked or received by the regional center or state developmental center, whichever is earlier.

If the issues raised in the hearing **do** relate to the Waiver Program, you will receive a final decision **within 90 days** following the date the Fair Hearing Request form is postmarked or received by the regional center or state developmental center, whichever is earlier.

If the decision is unfavorable to you and you have been receiving the services which were the subject of the appeal, the decision will not be implemented until **ten days** after you and your authorized representative receive the decision by certified mail. If you or your authorized representative cannot understand English, the written decision will be provided in English and the language you or your authorized representative understand.

## ***What Laws and Regulations Apply to Fair Hearing Procedures?***

Title 17 California Code of Regulations, Public Health Division 2, Chapter 1, Subchapter 9 and the Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code, Division 4.5, Chapter 7, Sections 4700-4730)

For Additional Information  
Please Contact Your Local Regional Center or  
State Developmental Center